IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINRY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 833 OF 2005

1. Mumbai Port Trust Retired Employees' Association, having its office at Thackersey House, 3rd Floor, E-Wing, J.N. Heredia Marg, Ballard Estate, Mumbai 400 038]

2. C.D. Umrigar, 2/C/39, Dossa Bldg., Dongari, N.H. Road No. 9, Opp. Noor Baug Post Office, Mumbai 400 009]

3. A.C. D'Souza, 26, Geeta Apartment, Vindya Nagari Marg, Kalina, Mumbai 400 098] …Petitioners

Versus

1. Union of India, Through Secretary, Ministry for Shipping, New Delhi]

2. The Chairman, Trustees of Port of Mumbai, Fort Bhavan, 2nd Floor, Ballard Pier, Mumbai 400 001.] ...Respondents

Mr. S.M. Dharap instructed by Mr. Neel Helekar
for the Petitioners

Mr. Umesh Shetty with Mr. A.G. Fegade instructed by
M/s. Mullah & Mullah & Craigie Blunt & Care
for the Respondents.

CORAM: DALVEER BHANDARI, C.J., &
S. J. VAZIFDAR, J.
DATE : AUGUST 30, 2005.

ORAL JUDGMENT (Per Dalveer Bhandari, C.J.):-

1. This petition has been filed by the Mumbai Port Trust Retired Employees' Association and two others with the prayer that the respondents be directed to allow the retirees enlisted at Exhibit 'A' to the petition to exercise the option and give benefits to them fulfilling the conditions laid down by the Scheme of Option.

2. It is also prayed that the respondents be directed to declare that the retirees enlisted at Exhibit 'A' to the petition are eligible and entitled to exercise option as per the Voluntary Retirement (Extended) Scheme, 1991.

3. The brief facts, which are necessary to highlight the controversy involved in this petition, are recapitulated as under:-

4. Under the Special Voluntary Retirement Scheme, 1992 (hereinafter, 'SVRS, 1992', for short), two options of retirement were available:

(i) Pensionary benefits under which retirees were eligible for payment of their terminal dues, such as, Provident Fund

contribution, Gratuity under the Gratuity Act, 1972, leave wages and in addition, special compensation at the rate of one and a half month's emoluments for each completed year of service and payment of balance months' wages left for superannuation, whichever was less, and one-way Leave Travel Concession to employee and family to a place where he intends to settle down;

(ii) Contributory Provident Fund (CPF), Gratuity as per the Gratuity Act, 1972 or the Gratuity Scheme applicable to the employee, leave wages and in addition, special compensation equal to three months' emoluments for each completed year of service or amount equal to emoluments for the balance months of service left for superannuation, whichever is less.

5. The members of the petitioner-Association opted to retire under the CPF Scheme, having lump sum monetary benefit. The petitioner's members received terminal dues and expressly gave up their claim for pension. They are now keen to avail of the benefit of the Scheme. The short question which falls for our consideration is: Whether, after a lapse of several years, can the petitioners be permitted to take a complete somersault and change their stand totally?

6. Pursuant to the show-cause notice issued by this Court, on behalf of the Trustees of the Port Trust, Mumbai, it is mentioned in the reply that the case of the petitioners is squarely covered by a Division Bench judgment of this Court delivered in Writ Petition No. 2606 of 1999 *(A.K. Michel v. The Chairman, Mumbai Port Trust, & Anr.)* on 29th January, 2000, and this petition deserves to be disposed of in terms of the said judgment.

7. It is also alleged that the Government Order was accepted and adopted by the Board of Trustees of Port Trust, Mumbai, vide Resolution No. TRS-45 on 11th February, 1997, by which an option was given to all employees, covered by the CPF Scheme and retired after 1st January, 1986 and on or before 11th February, 1997, to switch over to the Pension Scheme, *inter alia*, on the condition that the said option will have to be exercised by the concerned employees on or before 31st March, 1997.

8. By Circular dated 9th September, 1997, time to exercise the option to switch over to the Pension Scheme was extended by the Port Trust, Mumbai, till 30th September, 1997. Copy of the said circular was also issued to all principal officers for the

purpose of necessary information and for being passed on to the concerned employees.

9. A circular dated 13th November, 1997 was also marked to the principal officers of respondent No. 2 for the purpose of necessary information being given to all the concerned employees. Time to exercise the said option was further extended up to 31st December, 1997. Copies of the circulars dated 6th March, 1997, 9th September, 1997 and 13th November, 1997 have also been filed with the petition.

10. Admittedly, the members of the petitioner-Association did not avail of the benefits by refunding the additional compensation within the stipulated period i.e. on or before 28th February, 1998; and consequently, according to the respondents, they are not entitled to the benefit of the said scheme. As we have indicated in the preceding paragraph, this very controversy was the subject-matter of adjudication before a Division Bench of this Court, and the said Division Bench categorically came to the conclusion that the members of the petitioner-Association are not entitled to the said benefit and the Writ Petition was dismissed by this Court. That judgment of the Division Bench attained finality because no Special

Leave Petition was preferred before the Supreme Court against that judgment. As a matter of fact, the petitioners are not entitled to approach this Court again in view of the judgment of the Division Bench of this Court. The tendency of the litigants never to accept judgment of the Court seriously deserves to be curbed effectively.

11. It is also alleged by the respondents that the petitioners have chosen to file the present petition after a lapse of more than four years from the date of receipt of the aforesaid benefits. The claims of the first petitioner's members for the pension benefits after exercising option of CPF are also hit by delay and laches and this petition is clearly barred by limitation.

12. We also do not want to encourage the practice that though a Division Bench judgment of this Court has been delivered on the same issues (*A.K. Michel v. The Chairman, Mumbai Port Trust, & Anr.)* and became final a long time ago and it may not be possible to assail that judgment in the Supreme Court successfully because of laches and undue delay, therefore, file a fresh petition in a different name again only with a view

to overcome the difficulty of delay and laches in the Supreme Court within the prescribed limitation.

13. The Scheme has been made applicable for a long time for all similarly placed employees, and any interference by the Court, at this stage, would lead to serious consequences, and the entire Scheme, which has attained finality, would be upset. A matter of this nature would definitely affect a large number of people. There would be serious consequences for the respondents also.

14. What is imperative is that once a well-considered decision is taken, it should not be disturbed light-heartedly, unless there are serious infirmities and gross reasons to interfere with the impugned order. What is extremely important is that any Policy formulated by the State must attain finality in the larger public interest. All those who are governed by the said Policy are entitled to know the Policy clearly and in unequivocal terms. Frequent changes in Policies leave people in an arena of obscurity, ambiguity and uncertainty.

15. We have heard the learned counsel for the parties and perused the relevant documents and the judgment of the

Division Bench mentioned above. In our considered view, this petition, being devoid of any merit, deserves to be dismissed, which we hereby do, with costs of Rs.3,000/- (Rupees three thousand only) to be paid by the petitioners to respondent No. 2 within six weeks.

CHIEF JUSTICE

S.J. VAZIFDAR, J.